



## SOFT DRINK AND CANDY TAXES

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### STATES TAXING SOFT DRINKS AND CANDY

- Four states levy an excise tax on soft drinks, but none levy an excise tax on candy.
- 18 jurisdictions tax candy and 23 tax soft drinks at a higher sales tax rate than other groceries.
- Since 2013, at least 10 states have considered imposing taxes on soft drinks or candy, but none of those states have enacted such taxes.

### ISSUE

Which states tax soft drinks and candy? How do the (1) taxes work and (2) states allocate the revenue? (This report updates OLR report [2012-R-0490](#).)

Which states have recently proposed taxing soft drinks or candy? How would the taxes work?

Is there proposed federal legislation to tax soft drinks or candy? If so, would the legislation impact states seeking to do so?

### SUMMARY

We identified four states (Arkansas, Tennessee, Virginia, and West Virginia) that levy an excise tax on soft drinks, but none that levy an excise tax on candy.

All four of the states allocate all or a portion of the tax revenue generated to a specific purpose. Virginia and Tennessee direct the revenue to litter programs, while Arkansas and West Virginia direct the revenue to Medicaid and university programs, respectively.

While most states do not impose excise taxes on candy or soft drinks, many tax these goods at a higher sales tax rate than other grocery food. Of the 46 jurisdictions (45 states and the District of Columbia) that impose a state sales tax, 18 jurisdictions tax candy and 23 tax soft drinks at a higher rate than other groceries.

A search of 2013 and 2014 proposed bills found that at least 10 states (California, Connecticut, Hawaii, Illinois, Massachusetts, Nebraska, New York, Oregon, Rhode Island, and Vermont) considered imposing taxes on soft drinks or candy, but none have enacted such taxes. Most recently, Berkeley, California enacted an excise tax on soft drinks. The \$0.01 per ounce tax took effect on January 1, 2015.

Most of the state proposals we examined would have imposed an excise tax on soft drink distributors, manufacturers, or wholesalers, based on the volume of the beverage. Hawaii considered a proposal to base the tax on the sugar content of the beverage. Massachusetts and Nebraska, on the other hand, considered proposals to tax soft drinks or candy by subjecting them to state sales taxes.

There is currently no proposed federal legislation to tax soft drinks or candy, but in 2014 there was a proposal to tax soft drinks. The Sweetened Beverages Tax (SWEET) Act ([H.R. 5279](#)) would have imposed an excise tax on manufacturers, producers, and importers of sugar-sweetened beverages. The proposed tax was \$0.01 per teaspoon (4.2 grams) of sugar or other sweeteners contained in such beverages. It would have dedicated the revenue from the tax to fund programs and research designed to prevent and treat diabetes, obesity, tooth decay, and other diet-related diseases. Although the proposal would not have directly impacted states seeking to impose their own excise taxes on soft drinks, it would have increased the price of these products, thus potentially influencing both consumer behavior and the levying of additional state excise taxes.

## **STATE SOFT DRINK AND CANDY TAXES**

### ***Excise Taxes on Soft Drinks***

Four states (Arkansas, Tennessee, Virginia, and West Virginia) levy excise taxes on soft drinks. Table 1 below briefly describes each state's tax. The states vary in how they levy the tax. Arkansas and West Virginia base the tax on volume, while Tennessee and Virginia base it on gross receipts.

All four of the states allocate all or a portion of the tax revenue generated to a specific purpose. Tennessee and Virginia direct the tax revenues to litter programs, while Arkansas and West Virginia direct the revenues to Medicaid and university programs, respectively.

**Table 1: State Excise Taxes on Soft Drinks**

<b>State</b>	<b>Tax Rate and Base</b>	<b>Paid By</b>	<b>Use of Revenue</b>
Arkansas (Ark. Code Ann. § 26-57-901 et seq.)	<ul style="list-style-type: none"> <li>• \$2 per gallon of soft drink or simple syrup</li> <li>• \$0.21 per gallon of bottled or canned soft drink product</li> <li>• \$0.21 for each gallon produced by powders or base products</li> </ul>	Distributors, manufacturers, and wholesale dealers on the first sale in Arkansas	Funds the Arkansas Medicaid Program Trust Fund
Tennessee (Tenn. Code Ann. § 67-4-402)	1.9% of gross receipts derived from manufacturing, producing, or importing bottled soft drinks	Manufacturers, bottlers, and importers of bottled soft drinks	21% of the revenue funds litter prevention and collection programs
Virginia (Va. Code Ann. § 58.1-1700 et seq.)	Excise tax on gross receipts from soft drink sales as follows: <ul style="list-style-type: none"> <li>• \$50 if the gross receipts are \$100,000 or less</li> <li>• \$100 if the gross receipts are between \$100,000 and \$250,000</li> <li>• \$250 if the gross receipts are between \$250,000 and \$500,000</li> <li>• \$750 if the gross receipts are between \$500,000 and \$1,000,000</li> <li>• \$1,500 if the gross receipts are between \$1,000,000 and \$3,000,000</li> <li>• \$3,000 if the gross receipts are between \$3,000,000 and \$5,000,000</li> <li>• \$4,500 if the gross receipts are between \$5,000,000 and \$10,000,000</li> <li>• \$7,200 if the gross receipts are between \$10,000,000 and \$25,000,000</li> <li>• \$18,000 if the gross receipts are between \$25,000,000 and \$50,000,000</li> <li>• \$33,000 if the gross receipts exceed \$50,000,000</li> </ul>	Wholesalers and distributors of carbonated soft drinks	Funds the Litter Control and Recycling Fund
West Virginia (W. Va. Code Ann. § 11-19-1 et seq.)	Excise tax on sales, handling, use, or distribution of bottled soft drinks and soft drink syrup in the state as follows: <ul style="list-style-type: none"> <li>• \$0.01 on each bottle of 16.9 ounces (1/2 liter) of bottled soft drink</li> <li>• \$0.80 on each gallon of bottled soft drink syrup</li> <li>• \$0.84 on each four liters of soft drink syrup</li> <li>• \$0.01 on each ounce of dry mix used to make soft drinks</li> </ul>	Manufacturers, distributors, wholesale dealers, retail dealers, or any other person who is the original consignee of any bottled soft drink or soft drink syrup	Funds West Virginia University medical, dental, and nursing schools

### ***Sales Taxes on Soft Drinks and Candy***

Of the 46 jurisdictions (45 states and the District of Columbia) that impose a state sales tax, 33 exempt grocery food purchases from the tax and 6 tax such purchases at a reduced rate. Many of these jurisdictions exclude candy or soft drinks from the

definition of grocery food, thus making them taxable or subjecting them to the state's general sales tax rate. Table 2 indicates for each jurisdiction whether grocery food, candy, or soft drinks are taxable.

**Table 2: Taxability of Groceries, Candy, and Soft Drinks Across Jurisdictions**

*T= Taxable at general sales tax rate, E= Exempt, RR = Taxable at a reduced rate*

<i><b>Jurisdiction</b></i>	<i><b>State Sales Tax Rate</b></i>	<i><b>Grocery Food</b></i>	<i><b>Candy</b></i>	<i><b>Soft Drinks</b></i>
Alabama	4%	T	T	T
Arizona	5.6%	E	E	E
Arkansas	6.5%	RR	RR	RR
California <sup>1</sup>	7.5%	E	E	T <sup>4</sup>
Colorado	2.9%	E	T	T
Connecticut	6.35%	E	T	T
District of Columbia	5.75%	E	E <sup>2</sup>	T
Florida	6%	E	T	T
Georgia	4%	E	E	E
Hawaii	4%	T	T	T
Idaho	6%	T	T	T
Illinois	6.25%	RR	T	T
Indiana	7%	E	T	T
Iowa	6%	E	T	T
Kansas	6.15%	T	T	T
Kentucky	6%	E	T	T
Louisiana	4%	E	E	E
Maine	5.5%	E	T	T
Maryland	6%	E	T	T
Massachusetts	6.25%	E	E	E
Michigan	6%	E	E	E
Minnesota	6.875%	E	T	T
Mississippi	7%	T	T	T
Missouri	4.225%	RR	RR	RR <sup>5</sup>
Nebraska	5.5%	E	E	E
Nevada	6.85%.	E	E	E
New Jersey	7%	E	T	T
New Mexico	5.125%	E	E	E
New York	4%	E	T	T
North Carolina	4.75%	E	T	T
North Dakota	5%	E	T	T
Ohio	5.75%	E	E <sup>3</sup>	T
Oklahoma	4.5%	T	T	T
Pennsylvania	6%	E	E	T
Rhode Island	7%	E	T	T
South Carolina	6%	E	E <sup>3</sup>	E <sup>3</sup>
South Dakota	4%	T	T	T
Tennessee	7%	RR	T	RR
Texas	6.25%	E	T	T
Utah <sup>1</sup>	5.95%	RR	RR	RR
Vermont	6%	E	E	E
Virginia <sup>1</sup>	5.3%	RR	RR	RR
Washington	6.5%	E	E	T

<i><b>Jurisdiction</b></i>	<i><b>State Sales Tax Rate</b></i>	<i><b>Grocery Food</b></i>	<i><b>Candy</b></i>	<i><b>Soft Drinks</b></i>
West Virginia	6%	E	E	T
Wisconsin	5%	E	T	T
Wyoming	4%	E	E	E

Source: CCH State Tax Guide, State tax department websites

<sup>1</sup>State rate includes mandatory, statewide, local add-on sales taxes: California (1%), Utah (1.25%), and Virginia (1%).

<sup>2</sup>Candy bars purchased for immediate consumption are taxable when purchased with cash (rather than food stamps) in quantities of less than 6.

<sup>3</sup>Sale of candy or soft drinks for consumption on the premises is taxable.

<sup>4</sup>Only carbonated beverages are taxable; other soft drinks are exempt.

<sup>5</sup>Taxed at food rate if sold for off-premises consumption by a qualifying establishment.

Table 3 lists the jurisdictions that tax candy and soft drinks at a higher rate than grocery food. In all, 18 jurisdictions tax candy and 23 tax soft drinks at a higher rate than other groceries.

**Table 3: States that Tax Candy and Soft Drinks at Higher Rates than Groceries**

<i><b>Candy Taxed at Higher Rate</b></i>		<i><b>Soft Drinks Taxed at Higher Rate</b></i>	
Colorado	New Jersey	California (only carbonated beverages)	New Jersey
Connecticut	New York		New York
Florida	North Carolina		North Carolina
Illinois	North Dakota	Colorado	North Dakota
Indiana	Rhode Island	Connecticut	Ohio
Iowa	Tennessee	District of Columbia	Pennsylvania
Kentucky	Texas	Florida	Rhode Island
Maine	Wisconsin		Texas
Maryland		Illinois	Washington
Minnesota		Indiana	West Virginia
		Iowa	Wisconsin
		Kentucky	
		Maine	
		Maryland	
		Minnesota	

## **SOFT DRINK AND CANDY TAXES PROPOSED IN 2013 AND 2014**

At least 10 states proposed taxing soft drinks or candy in 2013 and 2014, but none of them enacted the taxes. Table 4 lists the states, briefly summarizes each proposal, and indicates the proposed basis and rate, taxpayer, and use of the funds.

Over the two-year period, eight of the states (California, Connecticut, Hawaii, Illinois, New York, Oregon, Rhode Island, and Vermont) considered 10 bills imposing an excise tax on soft drinks. With the exception of two bills from Connecticut and Hawaii, the states proposed imposing the tax on distributors, manufacturers, or wholesalers and basing it on the volume of the beverage or the volume of the beverage that soft drink syrups or powders could make. Hawaii considered a proposal that based the tax on the amount of sugar in the beverage. Connecticut's proposal, on the other hand, based the tax on sales price, but did not specify who would pay it.

Unlike the other states, Massachusetts and Nebraska considered proposals to subject soft drinks (and candy in the case of Massachusetts) to the existing state sales and use taxes.

Most of the states proposed using all or a portion of the revenue generated from the taxes to fund obesity prevention or other public health programs. Illinois and Vermont also proposed directing a portion of the tax revenue to their Medicaid programs. One of Hawaii's proposals would have directed the revenue to its community health centers and trauma system special funds.

**Table 4: Recent Soft Drink and Candy Tax Proposals**

<i><b>State and Bill</b></i>	<i><b>Proposal</b></i>	<i><b>Tax Basis and Rate</b></i>	<i><b>Imposed On</b></i>	<i><b>Proposed Use of Funds</b></i>
<b>California</b> <a href="#"><u>Senate Bill 622 (2013)</u></a>	Excise tax on sugar-sweetened beverages	\$0.01 per ounce	Distributors	Children's Health Promotion Fund (to fund childhood obesity prevention activities and programs)
<b>Connecticut</b> <a href="#"><u>SB 96 (2014)</u></a>	Excise tax on beverages high in calories and sugar	2% of sales price	Not specified	Not specified
<b>Hawaii</b> <a href="#"><u>SB 646 (2013)</u></a>	Excise tax on sugar-sweetened beverages	\$0.01 per teaspoon of sugar	Distributors	Community health centers and trauma system special funds
<b>Hawaii</b> <a href="#"><u>SB 1085 (2013)</u></a> <a href="#"><u>HB 854 (2013)</u></a>	Excise tax on sugar-sweetened beverages	\$1.28 per gallon	Distributors	Obesity and Chronic Disease Prevention Special Fund
<b>Illinois</b> <a href="#"><u>HB 5690 (2013 and 2014)</u></a>	Excise tax on sugar-sweetened beverages	\$0.01 per ounce	Distributors	Illinois Wellness Fund (to fund school health and wellness, obesity prevention, and other public health programs) and Medicaid program

<b>State and Bill</b>	<b>Proposal</b>	<b>Tax Basis and Rate</b>	<b>Imposed On</b>	<b>Proposed Use of Funds</b>
<b>Massachusetts</b> <a href="#">HB 2634 (2013)</a>	Sales and use tax on soft drinks and candy	6.25% of sales price	Consumers	Prevention and Wellness Trust Fund (to fund public health programs)
<b>Nebraska</b> <a href="#">LB 447 (2013)</a>	Sales and use tax on soft drinks	5.5% of sales price	Consumers	Nebraska Healthy Kids Fund (to fund student fitness and school district wellness programs) and local health departments
<b>New York</b> <a href="#">HB 7432 (2013)</a>	Excise tax on sugar-sweetened beverages	\$0.01 per ounce	Distributors	Children's Health Promotion Fund (to fund childhood obesity prevention activities and programs)
<b>Oregon</b> <a href="#">HB 2331 (2013)</a>	Excise tax on sugar-sweetened beverages	\$0.005 per ounce	Distributors/Manufacturers	Healthy nutrition, physical education, and public health programs and activities
<b>Rhode Island</b> <a href="#">HB 5228 (2013)</a>	Excise tax on sugar-sweetened beverages	\$1.28 per gallon	Distributors/Manufacturers/Wholesalers	Prevention and Wellness Trust Fund (to fund health and wellness programs, including grants to towns, community-based organizations, and health care providers)
<b>Vermont</b> <a href="#">HB 234 (2013)</a>	Excise tax on sugar-sweetened beverages	\$0.01 per ounce	Distributors	Vermont Healthy Weight Initiative Fund (to fund obesity prevention programs) and Medicaid

Sources: [UConn Rudd Center for Food Policy & Obesity's Legislation Database](#); Westlaw search; state legislative websites

## HYPERLINKS

2013 California Senate Bill No. 622,  
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<http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=85&GA=98&DocTypeId=HB&DocNum=5690&GAID=12&LegID=&SpecSess=&Session>, accessed January 14, 2015.

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<https://www.congress.gov/113/bills/hr5279/BILLS-113hr5279ih.xml>, accessed January 14, 2015.

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